

**REMARKS**

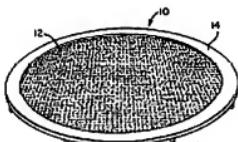
The present application has been reviewed in light of the Office Action mailed May 12, 2009. Claims 1, 3, 9, 16, 17 and 20 are currently pending. By the present amendment, Claims 21 and 22 having been added. No new matter is introduced by the amendment. Reconsideration of the present application is respectfully requested.

Claims 1, 3, 9, 16, 17 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,267,772 to Mulhauser et al. (hereinafter "Mulhauser") in view of U.S. Pat. No. 4,776,328 to Frey et al. (hereinafter "Frey") and U.S. Patent No. 5,139,499 to Small et al. Applicants respectfully traverse the rejections of Claims 1, 3, 9, 16, 17 and 20.

Claim 1 recites, an encapsulation device for the repair of an articular cartilage defect comprising, *inter alia*, an elongated leg structure comprising a plurality of elongated leg members ... each of said leg members being provided with a central channel therein, each of the channels opening on a proximal side of said frame and extending substantially the length of each of said leg members to a point proximate a closed distal end thereof. Claim 20 recites, a method for effecting a repair to an articular cartilage defect, the method comprising, *inter alia*, providing an encapsulation device comprising ... an elongated leg structure comprising ... legs, each leg provided with a central channel therein, the channel being open on a proximal side of the frame member and extending substantially the length of each of said leg member to a point proximate a closed distal end thereof ...."

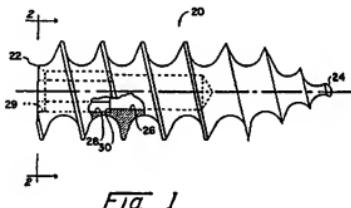
Mulhauser discloses an implantable prosthesis 10, shown in FIG. 2(a), reproduced below, for repairing and reinforcing a ruptured or defective muscle wall including a pliable tissue

infiltration fabric. As conceded by the Examiner, Mulhauser fails to teach an anchor which includes a central channel that extends substantially the length of the anchor member.



*Fig. 2(a)*

The Examiner relies on Small to teach an anchor having a central channel configured for engaging a delivery device. With reference to Fig. 1 reproduced below, Small discloses a screw 20 including a thread extending the length thereof. Screw 20 includes a blind axial bore 26 which extends from a proximal end of screw 20 to a central portion of screw 20 and is configured to receive a distal end 66 of a driver 50. Bore 26 enables screw 20 to provide positive rotational engagement between screw 20 and driver 50.



*FIG. 1*

Contrary to the Examiner's assertion, it would not have been obvious for one of ordinary skill in the art to modify the legs of the prosthesis of Mulhauser to include the bore of Small. As noted above, Small discloses a screw. Unlike the prosthesis of Mulhauser, driving the screw of

Small into tissue requires positive engagement between the screw and the driver to facilitate rotatable insertion of the screw into tissue. A person of ordinary skill of the art would not look to the screw of Small which is configured to be axially rotated for disclosure of a driver engagement interface for a device such as that disclosed by Mulhauser because barbs 22 of Mulhauser are fixed to semi-rigid frame 14, and thus, cannot be rotated. Accordingly, the combination of Mulhauser with Small is improper. Even if one were to incorporate bore 26 of Small into the barbs 22, the bore still would not extend “substantially the length of each of the leg members to a point proximate a closed distal end thereof,” as recited in Claim 1 and 20. Therefore, any proper combination of the cited references fails to disclose the device of Claim 1 and the method of Claim 20. Thus, Claims 1 and 20 are believed to be in condition for allowance.

Since Claims 3, 9, 16, 17 and 20 depend from independent Claim 1, and contain all the limitations of Claim 1, for at least the reasons discussed above with respect to Claim 1, Applicants submit that each of Claims 3, 9, 16, 17 and 20 is also in condition for allowance.

Claims 1, 3, 9 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,187,009 to Herzog et al. (hereinafter “Herzog”) in view of Small and Mulhauser. Applicants respectfully traverse the rejections of Claims 1, 3, 9 and 16.

Claim 1 recites, an encapsulation device for the repair of an articular cartilage defect comprising *inter alia*, an elongated leg structure comprising a plurality of elongated leg members..., said leg members each ... each of said leg members being provided with a central channel therein, each of the channels opening on a proximal side of said frame and extending

substantially the length of each of said leg members to a point proximate a closed distal end thereof.

With reference to FIG. 1, reproduced hereinbelow, Herzog discloses an implant for joining bone fragments. The implant includes a base body 1 and a pair of extensions 4 extending from body 1. Each of extensions 4 include outer surfaces 5 provided with retaining structure 9. As conceded by the Examiner, Herzog does not disclose legs including a central channel that is closed at the distal end.

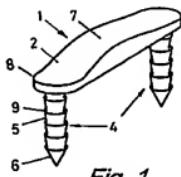


Fig. 1

The Examiner relies on Small to teach an anchor having a central channel configured for engaging a delivery device. For at least the same reasons as discussed above with regard to the combination of Small and Mulhauser, a person of ordinary skill of the art would not look to the screw of Small, which is configured to be axially rotated, for disclosure of a driver engagement interface for use with the rigid implant of Herzog. In addition, neither Herzog nor Small disclose a bore that extends substantially the length of each of the leg members to a point proximate a closed distal end thereof. As discussed above, Mulhauser fails to cure the deficiencies of Small and Herzog with regard to claim 1. Therefore, any proper combination of the cited references fails to disclose the device of Claim 1. Thus, Claim 1 is believed to be in condition for allowance.

Appl. No. 10/812,609  
Amendment dated August 11, 2009  
Reply to Office Action Mailed May 12, 2009

Since Claims 3, 9 and 16 depend from independent Claim 1, and contain all the limitations of Claim 1, for at least the reasons discussed above with respect to Claim 1, Applicants submit that each of Claims 3, 9, 16, 17 and 20 is also in condition for allowance.

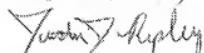
In view of the foregoing, this case is believed to be in condition for allowance, such early and favorable action is being earnestly solicited.

Should the Examiner believe that a telephone interview may facilitate resolution of any outstanding issues, the Examiner is respectfully requested to telephone Applicants' undersigned attorney at the number indicated below. Early and favorable consideration of the presently amended application is earnestly solicited.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. §1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550 therefor.

*Carter, DeLuca, Farrell & Schmidt, LLP*  
445 Broad Hollow Road, Suite 420  
Melville, New York 11747  
Tel.: (631) 501-5700  
Fax: (631) 501-3526

Respectfully submitted,

  
Justin J. Ripley  
Reg. No. 59,187  
Attorney for Applicant(s)

Correspondence Address:  
Chief Patent Counsel  
Covidien  
60 Middletown Avenue  
North Haven, CT 06473